

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

AUG 22 2003

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- IC# 70506

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

NXIVM CORPORATION, formerly known as  
EXECUTIVE SUCCESS PROGRAMS, INC., Delaware  
corporation, and FIRST PRINCIPLES, INC., a  
Delaware Corporation,

Plaintiffs,

vs.

THE ROSS INSTITUTE, RICK ROSS, a/k/a,  
"RICKY ROSS", PAUL MARTIN, Ph.D.  
WELLSPRING RETREAT, INC. and STEPHANIE  
FRANCO,

Defendants.

**COMPLAINT**

**03-CV-1051**

**TJM/DRH**

Plaintiffs, NXIVM Corporation ("NXIVM"), formerly known as Executive Success Programs, Inc. and First Principles, Inc., by its attorneys, submits the following, for its complaint against Defendants, THE ROSS INSTITUTE, RICK ROSS, a/k/a, "RICKY ROSS", PAUL MARTIN, Ph.D., WELLSPRING RETREAT, INC. and Stephanie Franco, demands a jury trial and Alleges as follows:

**JURISDICTION AND VENUE**

1. This Court possesses subject matter jurisdiction of this Complaint pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a) & (b). Subject Matter jurisdiction is based on at least one of Federal

Question, under the United States Copyright laws, 17 U.S.C. *et seq.*, and Diversity of citizenship, wherein the damages exceeds the sum or value of \$75,000.00.

2. The Court has personal jurisdiction over the defendant because defendants have committed the acts complained of in the Complaint within this judicial district of the Northern District of New York and are doing business within the State of New York.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 1400(a) in that plaintiff's claim arises in this district, and the plaintiff does business in this district.

### **PARTIES**

5. Plaintiff, NXIVM Corporation, formerly known as Executive Success Programs, Inc., is a foreign corporation formed and existing under the laws of the State of Delaware and authorized to do business in the state of New York, with its principal place of business located at 455 New Karner Road, Albany, NY 12205.

6. Plaintiff, First Principles, Inc., is a foreign corporation formed and existing under the laws of the State of Delaware and authorized to do business in the state of New York, with its principal place of business located at 455 New Karner Road, Albany, NY 12205.

7. Upon information and belief, and at all times relevant hereto, defendant, The Ross Institute is a not-for-profit organization created and existing under the laws of the State of New Jersey.

8. Defendant, The Ross Institute, does business in the State of New York with respect to the copyrights subject to this claim, and knowingly disseminates from its website the materials subject to this litigation for distribution to the geographic confines of the Northern District of New York.

9. Upon information and belief, defendant Rick Ross (a/k/a “Ricky Ross”), is an individual residing in the State of New Jersey.

10. Defendant Rick Ross has knowingly disseminated materials subject to this action within the jurisdiction of the Northern District of New York.

11. Upon information and belief, and at all times relevant hereto, defendant Paul Martin, Ph.D., is a licensed psychologist, with his principal place of business located at Albany, Ohio.

12. Defendant, Paul Martin, Ph.D., does business in the State of Ohio, and knowingly provides on the websites of defendants Rick Ross and The Ross Institute (“[www.cultnews.com](http://www.cultnews.com)” and “[www.rickross.com](http://www.rickross.com)”) materials subject to this claim for copyright violations within the geographical confines of the Northern District of New York

13. Defendant, Paul Martin, Ph.D., knowingly authorized the dissemination of the materials subject to this litigation to be regularly accessed from the jurisdiction of the United States District Court for the Northern District of New York, and to be downloaded within the jurisdiction of the United States District Court for the Northern District of New York.

14. Defendant, Wellspring Retreat, Inc., does business in the State of Ohio, and knowingly provides on the websites of defendants Rick Ross and The Ross Institute (“[www.cultnews.com](http://www.cultnews.com)” and “[www.rickross.com](http://www.rickross.com)”) materials subject to this claim for copyright violations within the geographical confines of the Northern District of New York. Wellspring Retreat, Inc. also is linked from the website of defendants Rick Ross and The Ross Institute via its own website, [www.wellspringretreat.org](http://www.wellspringretreat.org)

15. Defendant, Wellspring Retreat, Inc., advertises and otherwise does business within the geographical confines of the Northern District of New York. Wellspring Retreat,

www.wellspringretreat.org has an interactive website that allows consumers to purchase materials from their website within the geographical confines of the Northern District of New York.

16. Defendant, Wellspring Retreat, Inc., knowingly authorized the dissemination of the materials subject to this litigation to be regularly accessed from the jurisdiction of the United States District Court for the Northern District of New York, and to be downloaded within the jurisdiction of the United States District Court for the Northern District of New York.

17. Upon information and belief, and at all times relevant hereto, defendant Stephanie Franco is an individual residing at 36 Darlington Road, Deal, New Jersey 07723, and committed the actions upon which this claim is based within the jurisdiction of the United States District Court for the Northern District of New York.

### **THE FACTS**

18. NXIVM corporation, formerly known as Executive Success Programs, Inc., was founded in 1998 by Keith Raniere and Nancy Salzman. Keith Raniere was a computer analyst/scientist with 30 years experience, who holds 3 separate Bachelor of Science degrees in Mathematics, Physics and Biology and minors in Philosophy and Psychology from Rensselaer Polytechnic Institute (RPI), Troy, NY.

19. From its beginnings in 1998, NXIVM has grown from \$0.00/year income to an international, multi-million dollar-a-year business with over 3,700 customers world-wide.

20. NXIVM has an exclusive license agreement with First Principles, Inc. for the patent pending technology underlying the work.

21. NXIVM created the original works of authorship based on in-depth scientific research that has been developed progressively and cumulatively over a period of 30 years by Mr. Raniere, which will be described hereinafter in greater detail.

22. The expression of the works in the copyrights of NXIVM Corporation have been drafted in a meticulous fashion such that words, the order of words, questions and the order of questions used in the copyrighted works are critical to the success of the organization.

23. Customers of NXIVM pay up to \$10,000.00 for a 5 day course wherein students will receive training using the copyrighted materials.

24. Three of the copyrighted materials currently posted on the Internet, *12-Point Mission Statement* (hereinafter *12-Point Mission Statement*), Registration No. TXu1-111-082, registered on August 11, 2003 (annexed hereto as Exhibit A), *Work and Value* (hereinafter *Work and Value*), filed on August 1, 2003 (registration status currently unknown) (annexed hereto as Exhibit B) and *Face of the Universe* (hereinafter *Face of the Universe*), Registration No. TXu1-111-081 (annexed hereto as Exhibit C) reveal the methodologies that are critical to the heart of the entire NXIVM course work.

25. Whole passages of *12-Point Mission Statement* (Exhibit A), and *Rules and Rituals*, (annexed hereto as Exhibit D), Registration No. TXu1-111-080, have been literally copied, *verbatim*, by defendants.

26. The substantially similar copies of the copyrighted materials of NXIVM Corporation through posting them on the Internet and other means reveals the heart of what is important to the consumer and, thus, irreparably damages NXIVM's ability to, among other things, sell course work to new consumers.

27. Consumers that read the passages may no longer desire to attend a course wherein the material has been freely given to them. Revealing the course work's questions ahead of time irreparably damages the entire process for the consumer.

28. Individuals who have signed up for participation in the NXIVM course have canceled their registrations as a direct result of the dissemination of the copyrighted materials.

29. The copyrighted questions are designed to be answered without knowledge of the next question. Knowledge of the next question compromises and alters the answer to the current question.

30. As a result of the publication and dissemination of the copyrighted materials, NXIVM is currently losing \$10,000.00 per day in revenue.

31. During the week of August 11, 2003, NXIVM has been called by FORBES magazine who, upon information and belief, is contemplating running a magazine article that, upon information and belief, may contain the copyrighted material.

32. MSNBC has run a news story based on defendants acts which falsely portrays the copyrighted work.

33. Defendant, Rick Ross, is falsely portraying the copyrighted material and making false statements in the press, including the MSNBC news story. Goldie Hawn, a world-renown celebrity, who was to be the speaker at a forthcoming meeting convened by NXIVM, which information was not widely known or publicized by NXIVM, but only known amongst a small number of individuals, has cancelled her appearance (annexed hereto as Exhibit J).

34. NXIVM has lost a 4 year veteran Principal Coach due to the recent publicity surrounding defendants' acts.

35. NXIVM is currently building a 75,000<sup>+</sup> square foot facility in upstate New York, where it will center all of its programs, executive offices, and staff, which staff now number in excess of three hundred. The local, Clifton Park, Community News is running news articles propagating defendants false characterizations of the work which is creating a local furor over the building of their facility.

36. NXIVM requests a \$15 million building project on September 1<sup>st</sup>, 2003, be placed on the town's agenda. The unlawful dissemination of copyrighted materials and misrepresentations about them standing without legal resolution could likely result in NXIVM's project not being on the agenda. The delay would most likely cost an extra \$1.5 million.

37. NXIVM's copyrights are based on the theory and practice of Rational Inquiry<sup>TM</sup>. This practice involves analyzing and optimizing how the mind handles data. It involves mathematical set theory applied in a computer programmatic fashion to processes such as memory and emotion. It also involves a projective methodology that can be used for optimal communication and decision making.

38. Today, NXIVM trains business managers and chief executives of nationwide companies and managers of state agencies with up to forty business professionals, earning upwards of a million dollars per year at any one time participating in the program at one of the NXIVM training sites. Included in its business training have been CEOs, state commissioners, the leader of the largest business restructuring firm in the world, and the former first lady of Mexico.

39. Upon information and belief, at least one defendant, Rick Ross, has a \$4,000,000.00 judgement against him (annexed hereto as Exhibit F) which has not been satisfied and is

insolvent, thus, monetary damages will not provide an adequate remedy.

40. Plaintiffs will suffer irreparable harm by the actions of defendants Rick Ross, The Ross Institute, Paul Martin, and Wellspring Retreat, Inc. and Stephanie Franco and have no adequate remedy at law.

**CAUSE OF ACTION FOR COPYRIGHT VIOLATIONS AGAINST THE DEFENDANTS, PLAINTIFFS STATE AND ALLEGE THE FOLLOWING:**

41. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in paragraphs of this complaint designated "1" through "40", inclusive with the same force and effect as if hereinafter set forth in full.

42. On or about August 1, 2003, the copyrights entitled *12-POINT MISSION STATEMENT, TRIBUTE* (annexed hereto as Exhibit E), *WORK AND VALUE, RULES AND RITUALS* and *FACE OF THE UNIVERSE* were filed using special handling procedures to expedite registration with the United States Copyright Office.

43. On August 18, 2003, a call was placed to the United States Copyright Office to determine the status of the registrations. The copyrights were determined to be received on August 11, 2003 and in process by the Copyright Office. The Copyright faxed to plaintiff's attorneys on August 20, 2003 the Copyright registrations.

44. NXIVM corporation owns all right, title and interest in the copyrights entitled *12-POINT MISSION STATEMENT, TRIBUTE, WORK AND VALUE, RULES AND RITUALS* and *FACE OF THE UNIVERSE*.



45. NXIVM is the exclusive licensee of the patent pending technology underlying the copyrighted works entitled *12-POINT MISSION STATEMENT*, *TRIBUTE*, *WORK AND VALUE*, *RULES AND RITUALS* and *FACE OF THE UNIVERSE*.

46. The protected materials contained copyright notification pre-printed on all pages of the protected materials.

47. Defendants, Rick Ross and the Ross Institute, acknowledged access to the copyrighted works in a July 29, 2003 Albany *Times Union* article and on the websites of defendants Rick Ross and The Ross Institute by stating they had obtained the copyrighted works of plaintiff.

48. Despite knowing that the protected materials that it obtained were copyrighted, defendants Rick Ross and The Ross Institute obtained and utilized the copyrighted materials for their own commercial purposes and disseminated the copyrighted materials to defendant Paul Martin and the Wellspring Retreat, Inc. who, upon information and belief, was paid by or through Rick Ross and/or The Ross Institute to utilize, analyze and then disclose the protected materials or select portions of the protected materials of plaintiffs.

49. Defendant, Paul Martin, had access to *12-POINT MISSION STATEMENT*, *TRIBUTE*, *WORK AND VALUE*, *RULES AND RITUALS* and *FACE OF THE UNIVERSE* through Rick Ross and The Ross Institute.

50. Defendant, Paul Martin, obtained commercial benefit in obtaining the protected materials and disseminating the protected materials on the Internet through Rick Ross and The Ross Institute to market themselves to the public.

51. Defendant, Paul Martin, has specifically acknowledged that he had access to, obtained and utilized the plaintiffs' protected materials, which was done in violation of the copyright laws and prepared and issued two written reports which utilized the copyrighted materials by preparing a derivative work of the contents of the copyrighted materials, and then provided said written report on the protected materials to The Ross Institute and Rick Ross which detailed these distortions on the Internet.

52. Rick Ross and The Ross Institute, aware that the plaintiffs' materials were protected by copyright and confidential agreements, disseminated the Martin articles, *A Forensic Psychiatrist Evaluates ESP* (annexed hereto as appendix G), *Robert Jay Lifton's Eight Criteria of Thought Reform as Applied to the Executive Success Programs* (annexed hereto as Appendix H); and A Critical Analysis of the Executive Success Programs, Inc. (annexed hereto as Appendix I) that defendants Rick Ross and/or The Ross Institute, upon information and belief, had obtained on its website for distribution on the Internet to obtain commercial benefit.

53. The defendants copying is substantially similar to the copyrighted materials.

54. Defendants, The Ross Institute, Rick Ross, Paul Martin, Ph.D. and The Wellspring Retreat, Inc., individually and collaboratively, published portions of plaintiffs' copyrighted materials.

55. That defendants willfully and knowingly utilized and published copyrighted materials of plaintiffs in full violation of the copyrights of plaintiffs.

56. That the above actions of defendants were in direct violation of 17 U.S.C. *et seq.*

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS,  
PLAINTIFFS STATE AND ALLEGE THE FOLLOWING:**

**Interference with Contractual Relations (Pendent Claim)**

57. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in paragraphs of this complaint designated “1” through “56”, inclusive with the same force and effect as if hereinafter set forth in full.

58. That, at all times relevant hereto, the confidentiality agreement between defendant Stephanie Franco, and plaintiff NXIVM, was a legal and binding agreement between defendant Franco and plaintiff NXIVM.

59. Defendants caused Stephanie Franco to breach the agreement in numerous and varied substantial ways including, but not limited to, providing defendants Rick Ross and/or The Ross Institute with a copy of plaintiffs’ protected materials.

60. Upon information and belief, Defendant Stephanie Franco, knowingly and wilfully in violation of her contract with plaintiffs, induced defendants, The Ross Institute and Rick Ross, to publish the copyrights of Plaintiffs.

61. All enrollees in NXIVM are required to sign a Confidentiality Agreement agreeing to respect the confidentiality of the materials made available or provided to enrollees, and accede to the issuance of an injunction against the dissemination of those materials.

62. Upon information and belief, Defendant, Ross Institute and Rick Ross, were individually or collectively paid to obtain the copyrighted materials of plaintiff.

63. Defendants, Rick Ross, The Ross Institute, and Paul Martin, have conspired each with the other to violate plaintiff’s copyright, and utilize the proprietary materials of plaintiffs to cause a third party, Stephanie Franco to breach a confidentiality agreement.

64. Defendants, Rick Ross and The Ross Institute, obtain commercial gain using the protected materials to attract consumers and buyers to their website to purchase and utilize services and materials of The Ross Institute, Rick Ross and Paul R. Martin and to obtain national media coverage.

65. Plaintiffs will be irreparably harmed by the utilization of its protected materials and information by defendants.

66. That by reason of the foregoing, the plaintiffs have sustained substantial damages for breach of contract.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request:

1. A trial by jury at which may be determined, an accounting along with other measures of damages and relief:

- a. the damages resulting from lost profits owing to the acts and conduct of Defendants alleged in this complaint;
  - b. the damages to the good will and reputation of Plaintiff owing to the acts and conduct of Defendants alleged in this complaint;
  - c. the damages resulting from the loss of customers of NXIVM owing to the acts and conduct of Defendants alleged in this complaint;
- and

- d. the damages resulting from statutory damages, wilful damages and attorneys fees owing to the acts and conduct of Defendants alleged in this complaint.

2. A permanent injunction issue restraining Defendants tortiously interfering with Plaintiffs contractual relations.

3. A permanent injunction issue restraining defendants, and any person in concert or participation with it or acting at its direction or control, from directly or indirectly infringing any of the copyrights of NXIVM Corporation, including, but not limited to, *12-POINT MISSION STATEMENT, TRIBUTE, WORK AND VALUE, RULES AND RITUALS*, and *FACE OF THE UNIVERSE* in any manner, including, without limitation, by printing, creating electronic versions of, posting copies on the Internet, otherwise reproducing, creating derivative works (including translations), displaying, manufacturing, printing, reprinting, publishing, vending, taking orders, distributing, gifting, transferring, selling, licensing, promoting, advertising, or otherwise exploiting any infringing copies of NXIVM Corporation including, but not limited to, *12-POINT MISSION STATEMENT, TRIBUTE, WORK AND VALUE, RULES AND RITUALS*, and *FACE OF THE UNIVERSE* (or any version or portion thereof), or by causing or participating in any such acts.

4. Requiring Defendants to: (a) immediately recall from all of its customers, contacts, site viewers, and any other entity or individual any infringing copies, including all derivative works of NXIVM corporation's copyrights, including, but not limited to, *12-POINT MISSION STATEMENT, TRIBUTE, WORK AND VALUE, RULES AND RITUALS*, and *FACE OF THE*

*UNIVERSE* (or any version or portion thereof), or any portion thereof; (b) to remove the order form, download links, and any other infringing materials from public display; (c) to immediately stop distributing, copying or printing, in any manner or form, copyrights of NXIVM Corporation including, but not limited to *12-POINT MISSION STATEMENT, TRIBUTE, WORK AND VALUE, RULES AND RITUALS, and FACE OF THE UNIVERSE* (or any version or portion thereof); and (d) to deliver all of said materials and all other infringing materials created or used by defendant to plaintiffs which shall retain said products in a safe place during the pendency of this case.

5. Defendant is restrained from continuing to solicit orders or making direct or indirect comments based upon the material on the Internet, by email or any other means.

6. Such other and further relief as to this Court shall seem just.

Date: August 21, 2003

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